

the Administrative Agreement, and appropriate instructions will be prepared and issued by the Executive Director for guidance of project sponsors and applicants.

(b) Where no other state or federal agency has jurisdiction to review and approve a project, or no Administrative Agreement is in force, the project sponsor shall apply directly to the Commission.

(c) Any project proposal, which may have a substantial effect on the water resources of the Basin, may be received and reviewed by the staff informally in conference with the project sponsor during the preliminary planning phase to assist the sponsor to develop the project in accordance with the Commission's requirements.

(d) Whenever a project sponsored by one of the signatory parties, or by any agency, political subdivision or public corporation thereof, has been included in the Water Resources Program in the "A List" classification, the project, to the extent of such inclusion and as described in the Program, shall be deemed approved for the purposes of Section 3.8 of the Compact.

(e) Whenever a project is subject to review and approval by the Commission under this section, there shall be no substantial construction activity thereon, including related preparation of land, unless and until the project has been approved by the Commission; provided, however, that this prohibition shall not apply to the drilling of wells for purposes of obtaining geohydrologic data, nor to in-plant control and pretreatment facilities for pollution abatement.

§ 401.35 Classification of projects for review under Section 3.8 of the Compact.

(a) Except as the Executive Director may specially direct by notice to the project owner or sponsor, or as a state or federal agency may refer under paragraph (c) of this section, a project in any of the following classifications will be deemed not to have a substantial effect on the water resources of the Basin and is not required to be submitted under Section 3.8 of the Compact:

(1) The construction of new impoundments or the enlargement or removal of existing impoundments, for whatever purpose, when the storage capacity is less than 100 million gallons;

(2) A withdrawal from ground water for any purpose when the daily average gross withdrawal during any 30 consecutive day period does not exceed 100,000 gallons;

(3) A withdrawal from impoundments or running streams for any purpose when the daily average gross withdrawal during any 30 consecutive day period does not exceed 100,000 gallons;

(4) The construction of new domestic sewage treatment facilities or alteration or addition to existing domestic sewage treatment facilities when the design capacity of such facilities is less than a daily average rate of 10,000 gallons per day in the drainage area to Outstanding Basin Waters and Significant Resource Waters or less than 50,000 gallons per day elsewhere in the Basin; and all local sewage collector systems and improvements discharging into authorized trunk sewage systems;

(5) The construction of new facilities or alteration or addition to existing facilities for the direct discharge to surface or ground waters of industrial wastewater having design capacity of less than 10,000 gallons per day in the drainage area to Outstanding Basin Waters and Significant Resource Waters or less than 50,000 gallons per day elsewhere in the Basin; except where such wastewater contains toxic concentrations of waste materials;

(6) A change in land cover on major ground water infiltration areas when the amount of land that would be altered is less than three square miles;

(7) Deepening, widening, cleaning or dredging existing stream beds or relocating any channel, and the placement of fill or construction of dikes, on streams within the Basin except the Delaware River and tidal portions of tributaries thereto, and streams draining more than one state;

(8) Periodic maintenance dredging;

(9) Encroachments on streams within the Basin caused by:

(i) Floating docks and anchorages and buoys and navigational aids;

(ii) Temporary construction such as causeways, cofferdams and falsework

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required to facilitate construction on permanent structures;

(10) Bridges and highways unless they would pass in or across an existing or proposed reservoir or recreation project area as designated in the Comprehensive Plan;

(11) Liquid petroleum products pipelines and appurtenances designed to operate under pressures less than 150 psi; local electric distribution lines and appurtenances; local communication lines and appurtenances; local natural and manufactured gas distribution lines and appurtenances; local water distribution lines and appurtenances; and local sanitary sewer mains, unless such lines would involve significant disturbance of ground cover affecting water resources;

(12) Electric transmission or bulk power system lines and appurtenances; major trunk communication lines and appurtenances; natural and manufactured gas transmission lines and appurtenances; major water transmission lines and appurtenances; unless they would pass in, on, under or across an existing or proposed reservoir or recreation project area as designated in the Comprehensive Plan; unless such lines would involve significant disturbance of ground cover affecting water resources;

(13) Liquid petroleum products pipelines and appurtenances designed to operate under pressures of more than 150 psi, unless they would pass in, on, under or across an existing or proposed reservoir or recreation project area as designated in the Comprehensive Plan, or in, on, under or across any stream within the Basin; unless such lines would involve significant disturbance of ground cover affecting water resources;

(14) Landfill projects, unless no state-level review and permit system is in effect; broad regional consequences are anticipated; or the standards or criteria used in state level review are not adequate to protect the water of the Basin for the purposes prescribed in the Comprehensive Plan;

(15) Draining, filling or otherwise altering marshes or wetlands when the area affected is less than 25 acres; provided; however, that areas less than 25

acres shall be subject to Commission review and action;

(i) Where neither a state nor a federal level review and permit system is in effect, and the Executive Director determines that a project is of major regional or interstate significance requiring action by the Commission, or

(ii) When a Commissioner or the Executive Director determines that the final action of a state or federal permitting agency may not adequately reflect the Commission's policy as to wetlands of the Basin. In the case of a project affecting less than 25 acres for which there has been issued a state or federal permit, a determination to undertake review and action by the Commission shall be made no later than 30 days following notification of the Commission of such permit action. The Executive Director, with the approval of the Chairman, may at any time within the 30-day period inform any permit holder, signatory party or other interested party that the Commission will decline to undertake review and action concerning any such project;

(16) The diversion or transfer of water from the Delaware River Basin (exportation) whenever the design capacity is less than a daily average rate of 100,000 gallons;

(17) The diversion or transfer of water into the Delaware River Basin (importation) whenever the design capacity is less than a daily average rate of 100,000 gallons except when the imported water is wastewater;

(18) The diversion or transfer of wastewater into the Delaware River Basin (importation) whenever the design capacity is less than a daily average rate of 50,000 gallons; and

(19) Temporary or short term projects determined to have non-substantial impact on the water resources of the Basin by the Executive Director.

(b) All other projects which have or may have a substantial effect on the water resources of the Basin shall be submitted to the Commission in accordance with this part for determination as to whether the project impairs or conflicts with the Comprehensive Plan. Among these are projects involving the following (except as provided in paragraph (a) of this section):

(1) Impoundment of water;

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- (2) Withdrawal of ground water;
- (3) Withdrawal of water from impoundment or streams;
- (4) Diversion of water into or out of the Basin;
- (5) Deepening or widening of existing stream beds, channels, anchorages, harbors or turning basins, or the construction of new or enlarged channels, anchorages, harbors or turning basins, or the dredging of the bed of any stream or lake and disposal of the dredged spoil, when the nature or location of the project would affect the quantity or quality of ground or surface waters, or fish and wildlife habitat;
- (6) Discharge of pollutants into surface or ground waters of the Basin;
- (7) Facilities designed to intercept and transport sewage to a common point of discharge; and pipelines and electric power and communication lines;
- (8) Facilities for the direct discharge to surface or ground waters of industrial wastewater;
- (9) Projects that substantially encroach upon the stream or upon the 100-year flood plain of the Delaware River or its tributaries;
- (10) Change in land cover on major ground water infiltration areas;
- (11) Hydroelectric power projects, including pumped storage projects;
- (12) Projects or facilities of Federal, state and local agencies such as highways, buildings and other public works and improvements, affecting the water and related land resources of the Basin;
- (13) Draining, filling or otherwise altering marshes or wetlands;
- (14) Regional wastewater treatment plans developed pursuant to the Federal Water Pollution Control Act;
- (15) Landfills and solid waste disposal facilities affecting the water resources of the Basin;
- (16) State and local standards of flood plain regulation;
- (17) Electric generating or cogenerating facilities designed to consumptively use in excess of 100,000 gallons per day of water during any 30-day period; and
- (18) Any other project that the Executive Director may specially direct by notice to the project sponsor or land owner as having a potential substantial

water quality impact on waters classified as Special Protection Waters.

(c) Whenever a state or federal agency determines that a project falling within an excluded classification (as defined in paragraph (a) of this section) may have a substantial effect on the water resources of the Basin, such project may be referred by the state or federal agency to the Commission for action under this part.

(d) Except as otherwise provided by § 401.39 the sponsor shall submit an application for review and approval of a project included under paragraph (b) of this section through the appropriate agency of a signatory party. Such agency will transmit the application or a summary thereof to the Executive Director, pursuant to Administrative Agreement, together with available supporting materials filed in accordance with the practice of the agency of the signatory party.

§ 401.36 Water supply projects—Conservation requirements.

Maximum feasible efficiency in the use of water is required on the part of water users throughout the Basin. Effective September 1, 1981 applications under Section 3.8 of the Compact for new water withdrawals subject to review by the Commission shall include and describe water-conserving practices and technology designed to minimize the use of water by municipal, industrial and agricultural users, as provided in this section.

(a) Applications for approval of new withdrawal from surface or ground water sources submitted by a municipality, public authority or private water works corporation whose total average withdrawals exceed one million gallons per day shall include or be in reference to a program prepared by the applicant consisting of the following elements:

- (1) Periodic monitoring of water distribution and use, and establishment of a systematic leak detection and control program;
- (2) Use of the best practicable water-conserving devices and procedures by all classes of users in new construction or installations, and provision of information to all classes of existing users